

STAFF REPORT

A. Issues:

Adoption by the Board of Supervisors (the Board) of proposed amendments to the Public Facilities Manual (PFM) and Chapters 101 (Subdivision Ordinance) and 112 (Zoning Ordinance) of *The Code of the County of Fairfax, Virginia* (The Code). The proposed amendments improve and enhance the bonding and inspection requirements for land development projects. In addition, several editorial changes are being proposed including adjusting an inspection fee for consistency between the Zoning, Subdivision and Erosion and Sediment Control Ordinances.

B. Recommended Action:

Staff recommends that the Board adopt the proposed amendments.

C. Timing:

Board of Supervisors authorization to advertise – July 31, 2006.

Planning Commission Public Hearing – September 21, 2006, at 8:15 p.m.

Board of Supervisors Public Hearing – October 23, 2006 at 4:00 p.m.

D. Source:

Department of Public Works and Environmental Services (DPWES)

E. Coordination:

The proposed amendments have been prepared by DPWES and coordinated with the Department of Planning and Zoning (DPZ) and the Office of the County Attorney. The proposed amendments to the PFM have been recommended for approval by the Engineering Standards Review Committee.

F. Background:

In general, the proposed amendments are County initiatives to improve and enhance regulations related to the inspection and bonding of land development projects. The

proposed amendments address issues related to extending the allowable timing for pre-construction conferences; codifying the requirement for a certification by a surveyor that subdivision monuments have been installed; requiring a notification and replacement agreement when a developer's surety falls below the minimum rating standard, eliminating the processing fee for the replacement agreement when a surety falls below the minimum rating standard, and implementing stricter bond requirements for land development projects. The proposed bond improvements were part of the recommendations that were coordinated with members of the Northern Virginia Building Industry Association (NVBIA) and presented to the Board's Development Process Committee on May 16, 2005 and August 5, 2005.

In addition, several editorial changes are being proposed. The editorial amendments address issues related to renumbering and updating plates, and adjusting an inspection fee for consistency between the Zoning, Subdivision and Erosion and Sediment Control Ordinances. A detailed discussion of each amendment is set forth below.

Pre-construction Conference:

In accordance with the current PFM, a pre-construction conference must be held prior to the commencement of any site construction, particularly before any clearing and grading begins. The purpose of the meeting is for interested parties to meet and discuss important issues related to construction of the project. Depending on the type and scope of the project, issues that may be discussed at the pre-construction meeting include safety, project timing, protection of existing features and constructability issues such as steep slopes and poor soils.

In accordance with the current PFM, a pre-construction conference must be held within 3 working days upon receipt of a request by the developer, or in the event that the County is unable to schedule a conference within 3 working days, the conference must be scheduled in no more than 5 working days while permitting the developer to proceed with his work in strict accordance with all applicable codes, laws, and the approved plans.

Once the pre-construction conference is requested by the developer, the County inspector is responsible for arranging the conference to ensure that all concerned County agencies are represented at the meeting. Due to the fact that most land development projects contain construction issues that need to be discussed, or involve considerable public interest and neighbor involvement, the county inspector does not have sufficient time to thoroughly review the plan and perform the necessary coordination with other agencies. In addition, some projects contain proffers that require study and extensive coordination by the County inspector before a successful pre-construction meeting can be held.

The proposed amendment addresses the difficulties in meeting the current PFM requirement related to the timing of the pre-construction conference. If approved,

the proposed amendment would revise the PFM to extend the allowable time from 3 to 5 days, and, in the event that the County is unable to schedule a conference within 5 days, the proposed amendment extends the time to hold the meeting from 5 to 10 days. A copy of the proposed PFM amendment is included in Attachment A.

Survey Monuments:

The current PFM requires that monuments be installed establishing street and property lines for subdivisions. Section 2-0105.2 of the PFM addresses where the monuments shall be installed; however, the current PFM does not address the current practice of certifying that monuments have been installed to comply with the State Code requirements.

The proposed amendment revises the PFM to add new Section 2-0105.3 to codify the current practice regarding certification of monuments. If approved, the proposed amendment would require a certification by a surveyor licensed by the Commonwealth of Virginia prior to bond release. In addition, the PFM is being revised to address installation of monuments in difficult situations such as in pavement or on a retaining wall. The proposed amendment revises the PFM to permit "objects of permanent material" (e.g. pk nail, drill hole, or etch marking) in lieu of the standard 18-inch iron pipe or solid iron rod in accordance with the State Code. A copy of the proposed PFM amendment is included in Attachment A.

Bond Process:

The proposed amendment related to the bonding of land development projects revises the PFM to implement stricter bond requirements for developers that are in default. Under the current PFM, the bond amount includes the cost estimate for the subject public improvements plus an additional factor of 25% of the cost estimate to cover administrative costs, inflation, and potential damage to existing roads or utilities. Under the proposed amendment, in the event the developer has not met all the previous land development obligations in accordance with all development agreements with Fairfax County for the previous seven years, then the bond amount would include the cost estimate for the subject improvements plus an additional factor of 50% of the cost estimate.

In addition, if the developer has not met all the previous land development obligations in accordance with all development agreements with Fairfax County as determined by the Director, for the previous seven years, then a personal, corporate, or property bond would be disallowed. In these cases, security for such facilities should be provided in the form of a certified check, cash escrow, or a letter of credit, and the face amount of such surety after partial release shall never be less than 20% of the amount for which the original surety was taken, or the cost to complete the improvements, whichever is greater, and such partial releases may be permitted no more than three times within any twelve-month period. If approved by the Board, the proposed amendments related to the bonding of land development projects

revises the PFM to implement the recent changes to § 15.2-851.1 of the Code of Virginia.

Replacement Agreements:

Corporate bonds are one type of surety acceptable by the County to guarantee construction of a developer's land development project. The current PFM requirements for corporate bonds are found in Section 2-0601.4 and include a requirement that the corporate bond: 1) is furnished by an insurance company, licensed to transact business in Virginia; 2) guarantees the full amount of the construction cost estimate; and 3) is from a surety (insurance company) rated Class A VI or better as published in the A.M. Best Key Rating Guide.

The County assesses the stability of the insurance company via their Best Key rating. However, the current PFM does not include a provision to either notify the County, or replace a surety that falls below the County's minimum rating standard. The current PFM regulations only require that the surety meet the minimum rating standard at the time it's initially approved with the bond package. The proposed amendment revises the PFM to ensure that corporate sureties that fall below a Best Key Rating of A VI are "watched", and corporate sureties that fall to a Class B XV rating, or less (those determined to be "vulnerable" by A.M. Best) are replaced. A copy of the proposed PFM amendment is included in Attachment C.

In addition, the proposed amendment revises the Zoning and Subdivision Ordinances to eliminate the fee paid to the County for processing a replacement agreement in instances whereby the corporate surety falls to a "B" level according to the A.M. Best Key Rating Guide and when the replacement request is submitted to and approved by the Director prior to the expiration date of the agreement. Eliminating the replacement agreement processing fee will provide an incentive to the developers to replace any surety that falls below the acceptable rating standard. In addition, by reducing the number of sureties that fall below the acceptable rating standard, the proposed amendment will also improve the overall level of securities held by the County. A copy of the proposed Zoning and Subdivision Ordinance amendment to eliminate the fee associated with replacement agreements is included as Attachments B and C, respectively.

Editorial Changes:

Editorial changes include renumbering PFM Plates #37-7 (37M-7) and #41-6 (41M-6), renumbering PFM Sections 7-1200 (Plates) and 7-1300 (Tables), revising Plate #2-7 (2M-7) to indicate that the bottom of the slanted curb is used to establish street dimensions rather than the top of the slanted curb, updating the notes on Plate #32-7 (32M-7) related to the colonial light pole, and adjusting an inspection fee for consistency between the Zoning, Subdivision and Erosion and Sediment Control

Ordinances. A copy of the proposed editorial amendments are included in Attachments A (PFM amendments) and B (Zoning Ordinance amendments).

G. Summary of Proposed Amendments:

Below is a summary of the proposed provisions:

- 1) Extend the amount of time to hold a pre-construction meeting from 3 working days to 5 working days of the request. In the event that the County is unable to schedule a meeting within 5 working days of the request, the amount of time is extended to 10 working days of the request. (Refer to Attachment A)
- 2) Add a PFM requirement for a statement of certification by a surveyor that all required monuments have been installed in accordance with the Subdivision Ordinance and the PFM. In addition, clarify that a permanent marker (such as a pk nail, drill hole or etch mark) can be installed, in lieu of the 18-inch iron pipe or solid iron rod, in difficult situations. (Refer to Attachment A)
- 3) Implement changes to § 15.2-851.1 of the Code of Virginia related to stricter bond requirements for developers that are in default and have not met all their previous land development obligations in accordance with all development agreements with Fairfax County for the previous seven years. The stricter bond requirements relate to establishing the bond amount, bond reduction (partial release) amount, and the type of security permitted. (Refer to Attachment A)
- 4) Add a PFM requirement to ensure that insurance companies that fall below a Best Key Rating A-VI are “watched”, and insurance companies that fall to a Class B-VX rating, or lower are replaced by processing a replacement agreement and security. (Refer to Attachment A)
- 5) Revise the Zoning and Subdivision Ordinances to eliminate the fee paid to the County for processing a replacement agreement in instances when the corporate surety rating falls to a “B” level according to the A.M. Best Key Rating Guide and the replacement request is submitted to and approved by the Director prior to the expiration date of the agreement (not in default). (Refer to Attachments B and C respectively)
- 6) Renumber PFM Sections 7-1200 (Plates) and 7-1300 (Tables), and PFM Plates #37-7 (37M-7) and #41-6 (41M-6). (Refer to Attachment A)

- 7) Revise PFM Plate #2-7 (2M-7) to show that the base of slanted curb, rather than the top of curb, is used to establish street dimensions. (Refer to Attachment A)
- 8) Update the notes on PFM Plate #32-7(32M-7), Colonial Style Fixture for Subdivision Roadways with Curb-and-Gutter. (Refer to Attachment A)
- 9) Adjust an inspection fee in the Zoning Ordinance for consistency between the Zoning, Subdivision and Erosion and Sediment Control Ordinances. (Refer to Attachment B).

H. Attached Documents:

Attachment A - Proposed PFM Amendments

Attachment B - Proposed Zoning Ordinance Amendments

Attachment C - Proposed Subdivision Ordinance Amendments